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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

- - - - - X
In re: : Chapter 11
:
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
et al., :
:
Debtors. : Jointly Administered
- - - - - X

**AMENDED ORDER (1) APPROVING SALE OF AIRCRAFT FREE AND
CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES;
AND (2) GRANTING RELATED RELIEF**

This matter came before the Court on the
Debtors' Motion for Orders Pursuant to Bankruptcy Code
Sections 105, 363 and 364 (I)(A) Approving Procedures in
Connection with Sale of All or Substantially All of the
Business (B) Authorizing Debtors to Enter into Stalking

Horse Agreements in Connection with Store Closing and Miscellaneous Asset Sales or Stalking Horse or Financing Agreements in Connection with Going Concern Transactions, (C) Approving Payment of Termination Fees in Connection Therewith, and (D) Setting Auction and Hearing Dates, (II) Approving Sale of Debtors Assets Free and Clear of All Interests and (III) Granting Related Relief (the "Sale Motion").¹ Pursuant to the Sale Motion, the debtors and debtors in possession (collectively, the "Debtors") sought, *inter alia*, entry of orders (I)(A) approving procedures in connection with soliciting bids for a sale of all or substantially all of the business or additional post-petition financing for the business, (B) authorizing the Debtors to enter into stalking horse or financing agreements in connection with Going Concern Transactions or stalking horse agreements in connection with Store Closing and Miscellaneous Asset Sales and, (C) approving the Debtors' payment of a Termination Fee in connection therewith, and (D) scheduling Auction and Hearing Dates, (II) approving the sale of the Debtors' assets free and

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion.

clear of all interests, and (III) granting related relief.

On January 12, 2009, the Court signed the Order (I) Approving Procedures in Connection with Sale of All or Substantially All of the Business, (II) Authorizing Debtors to Enter into Stalking Horse Agreements in Connection with Store Closing and Miscellaneous Asset Sales or Stalking Horse or Financing Agreements in Connection with Going Concern Transactions, (III) Approving Payment of Termination Fees in Connection Therewith, (IV) Setting Auction and Hearing Dates Pursuant to Bankruptcy Code Sections 105 and 363 and (V) Granting Related Relief (the "Sale Procedures Order"), authorizing the Debtors to proceed with the sale procedures set forth therein (the "Bidding Procedures") and approving the Termination Fee and the form of notice of the hearing on the Sale Motion.

The Court having conducted a hearing on the Sale Motion on January 16, 2009 (the "Sale Hearing"); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Aircraft Purchase and Sale Agreement (the "Purchase Agreement", at-

tached hereto as Exhibit A), and the transactions contemplated thereby (the "Transactions"); and the Court having reviewed and considered the Sale Motion, and the arguments of counsel made, and the evidence adduced, at the Sale Hearing; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; and upon the record of the Sale Hearing and these chapter 11 cases, and after due deliberation thereon, and good cause appearing therefore; **THE COURT HEREBY FINDS DETERMINES AND CONCLUDES**

THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any of the following findings of fact are determined to be conclusions of law, they are adopted, and shall be construed and deemed, conclusions of law. To the extent any of the following conclusions of law are determined to be findings of fact, they are adopted, and shall be construed and deemed, as findings of fact.

B. The Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested in the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). Venue of these cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. The statutory predicates for the relief requested in the Sale Motion are Bankruptcy Code sections 105 and 363 and Bankruptcy Rules 4001 and 6004.

D. Notice of the Sale Motion and entry of the Bidding Procedures Order has been provided to those parties entitled to notice under the Debtors' Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (Docket No. 130; the "Case Management Order"), as well as (a) all entities known to have expressed an interest in a transaction regarding the Debtors' assets, stores or inventory during the past three (3) months; (b) all landlords and entities known to have an interest in any of the assets to

be sold; and (c) all federal, state, and local regulatory or taxing authorities or recording offices that have a reasonably known interest in the relief requested through the Sale Motion.

E. Based upon the affidavits of service filed with the Court: (a) notice of the Sale Motion, the Bidding Procedures, the Sale Procedures Order, and the Sale Hearing was adequate and sufficient under the circumstances of these chapter 11 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code and the Bankruptcy Rules; and (b) a reasonable opportunity to object and be heard with respect to the Sale Motion and the relief requested therein was afforded to all interested persons and entities.

F. The Aircraft is property of the Debtors' estates and title thereto is vested in the Debtors' estates.

G. The Bidding Procedures were substantively and procedurally fair to all parties, were consented to by all parties in the chapter 11 cases, and were the

result of intense arms length negotiations among the Debtors, the Committee, and the DIP Agent.

H. The Debtors and their professionals marketed the Aircraft and conducted the sale process in accordance with the Bidding Procedures. Based upon the record of these proceedings, all creditors and other parties-in-interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Aircraft.

I. After an auction held on January 14, 2009, the Debtors determined that the highest and best Qualified Bid was that of TACALA, LLC (the "Purchaser").

J. At the Auction, Purchaser bid \$4,750,000 (the "Bid") for the Aircraft, which Bid was a valid and proper offer pursuant to the Bidding Procedures and Bankruptcy Code Sections 363(b) and 363(k).

K. Subject to the entry of this Order, each Debtor (i) has full power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the sale of the Aircraft by the Debtors has been duly and validly authorized by all necessary company action of each of the Debtors, (ii) has all of the

power and authority necessary to consummate the Transactions contemplated by the Purchase Agreement, (iii) has taken all company action necessary to authorize and approve the Purchase Agreement and the consummation by such Debtors of the Transactions. No consents or approvals, other than those expressly provided for in the Purchase Agreement or this Order, are required for the Debtors to close the sale of the Aircraft (the "Sale") and consummate the Transactions.

L. Entry into the Purchase Agreement and consummation of the Transactions constitute the exercise by the Debtors of sound business judgment and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest. The Court finds that the Debtors have articulated good and sufficient business reasons justifying the Sale of the Aircraft to Purchaser. Such business reasons include, but are not limited to, the following: (i) the Purchase Agreement constitutes the highest and best offer for the Aircraft; (ii) the Purchase Agreement and the closing (the "Closing") thereon will present the best opportunity to realize the value of the Aircraft; (iii) there is

substantial risk of deterioration of the value of the Aircraft if the Sale is not consummated promptly; and (iv) the Purchase Agreement and the Closing thereon will provide a greater recovery for the Debtors' creditors than would be provided by any other presently available alternative.

M. The Purchase Agreement and the Transactions were negotiated and have been and are undertaken by the Debtors and Purchaser at arms' length without collusion or fraud, and in good faith within the meaning of Sections 363(m) and (n) of the Bankruptcy Code. An auction was conducted in accordance with the Sale Procedures Order on January 14, 2009, at which Purchaser was declared the highest and best bidder. The auction was conducted at arms' length and in good faith within the meaning of Section 363(m) of the Bankruptcy Code. As a result of the foregoing, the Debtors and Purchaser are entitled to the protections of Section 363(m) of the Bankruptcy Code. Moreover, neither the Debtors nor Purchaser engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Trans-

actions to be avoided, or costs or damages to be imposed, under Section 363(n) of the Bankruptcy Code.

N. The total consideration provided by Purchaser for the Aircraft is the highest and best offer received by the Debtors, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia ((a), (b) and (c) collectively, "Value"), for the Aircraft.

O. Purchaser would not have entered into the Purchase Agreement and would not consummate the Transactions, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Aircraft to Purchaser was not free and clear of all liens, claims, interests and encumbrances (the "Liens, Claims, Interests and Encumbrances"), if any, or if Purchaser would, or in the future could, be liable for any of such Liens, Claims, Interests and Encumbrances. A sale of

the Aircraft other than one free and clear of Liens, Claims, Interests and Encumbrances would adversely impact the Debtors' estates, and would yield substantially less value for the Debtors' estates, with less certainty than the Sale. Therefore, the Sale contemplated by the Purchase Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

P. The Debtors may sell the Aircraft free and clear of all Liens, Claims, Interests and Encumbrances, if any, because, with respect to each creditor asserting a Lien, Claim or Interest, one or more of the standards set forth in Bankruptcy Code § 363(f)(1)-(5) has been satisfied. All holders of Liens who did not object or withdrew their objections to the Sale are deemed to have consented to the Sale pursuant to 11 U.S.C. § 363(f)(2) and all holders of Liens are adequately protected by having their Liens, Claims, Interests and Encumbrances if any, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they claim an interest with the same priority, validity, force, and effect as they at-

tached to such property immediately before the closing of the Sale.

Q. There was no evidence of insider influence or improper conduct by Purchaser or any of its affiliates in connection with the negotiation of the Purchase Agreement with the Debtors. There was also no evidence of fraud or collusion among Purchaser and its affiliates and any other bidders for the Debtors' assets, or collusion between the Debtors and Purchaser or its affiliates to the detriment of any other bidders.

R. At no time was Purchaser or its affiliates an "insider" or "affiliate" of any of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors or stockholders existed between Purchaser or its affiliates and any of the Debtors. The Transactions do not amount to a consolidation, merger or *de facto* merger of Purchaser and the Debtors' and/or the Debtors' estates, there is not substantial continuity between Purchaser and the Debtors, there is no continuity of enterprise between the Debtors and Purchaser, Purchaser is not a mere continuation of the Debtors or the Debtors' estates, and

Purchaser does not constitute a successor to the Debtor or the Debtors' estates.

S. Except as otherwise expressly provided in the Purchase Agreement, the transfer of the Aircraft to Purchaser will be a legal, valid, and effective transfer of the Aircraft, and will vest Purchaser with all right, title, and interest of the Debtors to the Aircraft free and clear of all Liens, Claims, Interests and Encumbrances, if any, including but not limited to all Claims arising under doctrines of successor liability.

T. Approval of the Purchase Agreement and consummation of the Sale of the Aircraft at this time are in the best interests of the Debtors, their creditors, their estates, and all parties in interest. Time is of the essence in consummating the Sale. In order to maximize the value of the Debtors' assets, it is essential that the sale of the Aircraft occur as soon as possible. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rule 6004.

Based upon all of the foregoing, and after due deliberation, **THE COURT ORDERS, ADJUDGES, AND DECREES THAT:**

1. The relief requested in the Sale Motion is granted with respect to the Purchase Agreement in the manner and to the extent provided herein.

2. The Purchase Agreement, the Bid, and the Sale of the Aircraft to Purchaser, are hereby approved and authorized in all respects.

3. Pursuant to 11 U.S.C. §§ 363(b) and 363(f), upon the consummation of the Agreement, the Seller's right, title, and interest in the Aircraft shall be transferred to the Purchaser free and clear of all Liens, Claims, Interests and Encumbrances with all such Liens, Claims, Interests and Encumbrances to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they had as against the Property immediately before such transfer, subject to any claims and defenses the Seller may possess with respect thereto.

4. Except as expressly provided in the Purchase Agreement, Purchaser is not assuming nor shall it or any affiliate of Purchaser be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtors in any way

whatsoever relating to or arising from the Debtors' ownership or use of the Aircraft prior to the consummation of the Transactions contemplated by the Purchase Agreement, or any liabilities calculable by reference to the Debtors or their operations or the Aircraft, or relating to continuing or other conditions existing on or prior to the Closing, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Purchaser or any affiliate of the Purchaser.

5. The consideration provided by Purchaser for the Aircraft under the Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute Value under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded, under Section 363(n), or any other provision of the Bankruptcy Code.

6. The Transactions are undertaken by Purchaser in good faith and Purchaser is a purchaser in good faith of the Aircraft as that term is used in Section 363(m) of the Bankruptcy Code. Purchaser is entitled to all of the protections afforded by Section

363(m) of the Bankruptcy Code; accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale of the Aircraft to Purchaser, unless such authorization is duly stayed pending such appeal.

7. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors and the Purchaser are each hereby authorized and directed to take any and all actions necessary or appropriate to: (i) consummate the sale of the Aircraft to Purchaser (including, without limitation, to convey to Purchaser the Aircraft) and the Closing of the Sale in accordance with the Sale Motion, the Purchase Agreement and this Order; and (ii) perform, consummate, implement and close fully the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, including without limitation, take all actions and execute all documents reasonably necessary or appropriate to effectuate any obligations under the Purchase Agreement and to execute and deliver such other documents and take such other ac-

tions as are necessary to effectuate the Sale contemplated by the Purchase Agreement. The parties shall have no obligation to proceed with the Closing of the Purchase Agreement until all conditions precedent to their obligations to do so, including completion of the pre-purchase evaluation as set forth in Section 3 thereof, have been met, satisfied or waived.

8. Purchaser is authorized to remit or cause to be remitted at Closing (or at such other times as provided in the Purchase Agreement), in accordance with the terms of the Purchase Agreement, to the Debtors, \$4,750,000.

9. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale and the Transactions.

10. The Debtors are authorized to pay fees to their broker that become due and payable as a result of the sale of the Aircraft.

11. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Aircraft or a bill of sale transferring

good and marketable title in such Aircraft to Purchaser on the Closing Date pursuant to the terms of the Purchase Agreement.

12. This Order is and shall be binding upon and govern the acts of all entities, including, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Aircraft conveyed to Purchaser. All such entities described above in this paragraph are authorized and specifically directed to strike all recorded Liens, Claims, Interests and Encumbrances against the Aircraft from their records, official and otherwise.

13. Each and every federal, state and governmental agency or department, and any other person or en-

tity, is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

14. This Order and the Purchase Agreement shall be binding in all respects upon all creditors and equityholders of any of the Debtors, the Committee, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, "responsible persons" or other fiduciaries appointed in the Debtors' bankruptcy chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code, and the Purchase Agreement shall not be subject to rejection or avoidance under any circumstances.

15. The Purchase Agreement and any related agreements, documents, or other instruments may be modified amended, or supplemented by the parties thereto, in a writing signed by the parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

16. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rule 6004(g) and any other provision of the Bankruptcy Code or Bankruptcy Rules is expressly lifted.

17. The provisions of this Order are non-severable and mutually dependent.

18. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any Permit relating to the operation of the Aircraft sold, transferred or conveyed to Purchaser on account of the filing or pendency of these Chapter 11 cases or the consummation of the Sale.

19. Each and every federal, state and local government agency or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transfer of any of the Aircraft, all without imposition or payment of any stamp tax, transfer tax, or similar tax.

20. The failure specifically to include or make reference to any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the

intent of the Court that the Purchase Agreement is authorized and approved in its entirety.

21. The Court retains jurisdiction, even after the Closing of these chapter 11 cases, to: (1) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Purchase Agreement, all amendments thereto and any waivers and consents thereunder; (2) protect Purchaser, or the Aircraft, from and against any of the Liens, Claims, Interests and Encumbrances; (3) compel delivery of all Aircraft to Purchaser; and (4) resolve any disputes arising under or related to the Purchase Agreement, the Sale or the Transactions, or Purchaser's peaceful use and enjoyment of the Aircraft.

Dated: Richmond, Virginia
January ___, 2009

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Counsel to the Debtors
and Debtors in Possession

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley
Douglas M. Foley